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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on
Regulations Relating to Passenger Carriers,
Ridesharing, and New Online-Enabled
Transportation Services

R.12-12-011
(Filed December 20, 2012)

MOTION OF RASIER-CA, LLC TO EXPAND THE SCOPE OF RULEMAKING 12-12-011 TO DEVELOP INDUSTRY-WIDE ZERO TOLERANCE RULES PURSUANT TO THE SETTLEMENT AGREEMENT BETWEEN RASIER-CA, LLC AND THE CONSUMER PROTECTION AND ENFORCEMENT DIVISION REGARDING ZERO TOLERANCE RULES IN SAFETY REQUIREMENT D OF DECISION 13-09-045

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I. INTRODUCTION

Pursuant to Rule 12.1, *et. seq.*, of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the Settlement Agreement and Release entered into by Rasier-CA, LLC ("Rasier-CA") and the Consumer Protection Enforcement Division ("CPED") on October 13, 2017 in connection with the Order Instituting Investigation and Order to Show Cause, I.17-04-009 (hereinafter, "Settlement Agreement"), Rasier-CA files this motion to expand the scope of Rulemaking 12-12-011 ("TNC Rulemaking") to develop industry-wide standards for the investigation of zero tolerance complaints ("ZTCs") pursuant to Safety Requirement D.3 of D. 13-09-045 ("Safety Requirement D"). Rasier-CA believes the establishment of uniform standards would clarify the requirements imposed by Safety Requirement D. Specifically, further guidance is needed because the rule does not define the terms "promptly" and "further investigation," and fails to set forth minimum standards for suspending access to a TNC platform and investigating a driver suspected of a zero tolerance violation.

The adoption of uniform protocols applicable to the entire Transportation Network Company ("TNC") industry is also in the public interest and may enhance public safety. Developing robust standards for addressing ZTCs would likely serve as an effective deterrent against driving under the influence of drugs or alcohol. Doing so in the context of the TNC Rulemaking will invite valuable input from TNCs regarding the best approach to ZTCs. Moreover, establishing minimum standards for compliance with Safety Requirement D would reduce regulatory uncertainty for all TNCs given the Commission's guidance on this issue. The benefits derived from establishing uniform, industry-wide protocols for ZTC processing support Rasier-CA's request that the Commission expand the scope of the TNC Rulemaking for this

purpose. Rasier-CA supports the Commission's ongoing efforts to protect the public against driving under the influence and believes this step will be a valuable contribution.

II. BACKGROUND

Rasier-CA brings this motion pursuant to the terms of the Settlement Agreement entered into with CPED to resolve the issues raised in the Order Instituting Investigation and Order to Show Cause, I.17-04-009 ("OII/OSC"). The Settlement Agreement was achieved through the collective efforts of both parties to address issues related to Rasier-CA's compliance with the zero tolerance rules in Safety Requirement D. After devoting significant time and resources to analyzing the complexities inherent in ZTC processing, the need for greater clarity around the rule became evident. The parties' discussions highlighted the importance of making thoughtful and appropriate responses to ZTCs while also ensuring that TNCs adhere to certain minimum standards when doing so. Recognizing the significance of these issues as they relate to the broader TNC industry, Rasier-CA agreed to file a motion to expand the scope of the TNC Rulemaking to develop zero tolerance standards applicable to all TNCs. Rasier-CA supports the Commission's guidance on this issue and welcomes the opportunity to assist the Commission in developing a unified approach to ZTCs.

III. THE COMMISSION SHOULD DEVELOP INDUSTRY-WIDE ZERO TOLERANCE PROTOCOLS UNDER SAFETY REQUIREMENT D OF D. 13-09-045

A. Industry-Wide Zero Tolerance Protocols Would Likely Promote Public Safety and Awareness of Zero Tolerance Rules

Establishing uniform protocols and the minimum standards for compliance with Safety Requirement D is in the public interest. Doing so would require all TNCs to take their zero tolerance policies seriously. Adopting industry-wide standards will also reassure riders that each company has robust processes in place to protect the public against intoxicated drivers. Riders can take trips knowing there are mechanisms available to report a driver they suspect of a zero

tolerance violation and that such complaints will be investigated pursuant to a uniform standard. Having established processes in place for all TNCs will also likely act as a deterrent against driving under the influence.

The importance of improving awareness of and adherence to zero tolerance rules cannot be understated. Equally significant is ensuring that TNCs respond quickly to ZTCs so that drivers who are actually under the influence are suspended from the platform. However, the Commission must consider the competing public safety issues implicated by careless ZTC suspensions. For example, instantaneous removal of drivers from the platform may have the unintended consequence of harming a rider whom a driver suspects of filing a ZTC against them. The appropriate timing of suspensions must therefore account for potential acts of retaliation. Another significant consideration when determining the appropriate response to ZTCs is the risk of unfairly curtailing drivers' livelihoods by acting on unsubstantiated ZTCs. While swift responses are necessary, drivers should be given a fair process before any permanent suspensions are instituted. These considerations must be explored in greater detail with the entire TNC industry in order to strike the proper balance between these issues.

B. Developing Industry-Wide Standards Within the TNC Rulemaking Will Allow Valuable Input by TNCs Regarding the Adopted Standards

Expanding the scope of the TNC Rulemaking to develop industry-wide ZTC protocols provides a forum for TNCs to express their valuable insights into ZTC processing. Broader participation by the entire TNC industry will better inform the adopted standards, as they are likely aware of the complexities involved in responding to zero tolerance incidents. In addition to the competing concerns referenced above, TNCs must take a careful and nuanced approach when investigating and adjudicating ZTCs. ZTCs typically involve one person's word over

another and rarely dictate a straightforward result. Rasier-CA is often forced to make decisions with only unsubstantiated allegations to guide them.

These challenges are not unique to Rasier-CA, but are germane to the TNC industry. Currently, TNCs have instituted their own best practices for identifying, investigating and responding to ZTCs. The Commission should leverage the insights and lessons learned in the course of doing so to achieve the most effective protocols. Through months of prolonged discussions, Rasier-CA and CPED were able to agree to standard protocols to address the challenges present in ZTC processing. While Rasier-CA appreciated the opportunity to explore these issues in the first instance with CPED, it recognizes the importance of stakeholder input for developing standards that reflect the experiences and perspectives across the industry.

C. The Adoption of Uniform ZTC Standards Would Mitigate Regulatory Uncertainty

The adoption of uniform standards for processing ZTCs will reduce regulatory uncertainty across the industry. TNCs would be well served with additional guidance on how to comply with the zero tolerance rules in Safety Requirement D. As written, subsection 3 of Safety Requirement D states that “[p]romptly after a zero-tolerance complaint is filed, the TNC shall suspend the driver for further investigation.” However, Safety Requirement D neither elaborates on the terms “promptly” and “further investigation” nor does it explain what TNCs must do to comply with those rules. It also fails to set forth minimum standards or criteria to suspend access to a TNC’s platform or investigate a driver suspected of a zero tolerance violation. Moreover, the OII/OSC is the first proceeding related to Safety Requirement D.³ since Decision 13-09-045 was adopted in September 2013 so there is no directly applicable precedent.

Under the existing framework, TNCs are at risk for unintentional violations despite their best efforts at compliance. This risk is magnified given the complexities involved with processing zero tolerance complaints. Uniform protocols will not only ensure that TNCs take the requisite actions in response to ZTCs, but they will address the ambiguities and limitations underlying Safety Requirement D. In addition, uniform standards will avoid a “race to the bottom” by TNCs who may be incentivized to do the bare minimum in order to gain a competitive advantage.

IV. CONCLUSION

Rasier-CA appreciates the Commission’s continued efforts to promote and improve public, passenger, and driver awareness of zero tolerance rules, and to ensure compliance with Safety Requirement D. Rasier-CA believes the adoption of uniform standards to apply to the entire TNC industry is an important step to achieving that purpose. Accordingly, Rasier-CA requests that the Commission expand the scope of the Rulemaking to develop industry-wide ZTC protocols. Rasier-CA welcomes the opportunity to provide any assistance to the Commission in connection with this effort.

Respectfully submitted on this 7th day of January, 2019 in San Francisco, California.

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